

BEFORE THE TEACHERS' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption of the New ) NOTICE OF PUBLIC HEARING ON  
Rules I through IX and amendment of ) PROPOSED ADOPTION AND  
ARM 2.44.301A, 2.44.522, and 2.44.523 ) AMENDMENT  
pertaining to the administration of the )  
Teachers' Retirement System of the )  
State of Montana )

TO: All Concerned Persons

1. On December 1, 2008, at 9:00 a.m., the Teachers' Retirement Board of the State of Montana will hold a public hearing in the Board Room of the Teachers' Retirement System Building at 1500 E. 6th Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Teachers' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 1:00 p.m., November 17, 2008, to advise us of the nature of the accommodation that you need. Please contact David L. Senn, Teachers' Retirement System, 1500 E. 6th Avenue, P.O. Box 200139, Helena, Montana 59620-0139; telephone (406) 444-3134; fax (406) 444- 2641; or e-mail dsenn@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I LIMITATION ON AFTER-TAX PURCHASE OF PERMISSIVE SERVICE CREDIT (1) The Teachers' Retirement System can accept after-tax contributions from a member during a limitation year only if:

(a) the voluntary additional contribution to be made by the member does not exceed the amount determined by the Teachers' Retirement System to be necessary to fund the benefit attributable to such service credit; and

(b) the requirements of Internal Revenue Code (IRC) section 415(b) are met (without regard to any reductions for early retirement age), determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC section 415(b); or

(c) the requirements of IRC section 415(c)(1)(A) of the are met (without regard to the compensation limit), determined by treating all such contributions as annual additions for purposes of IRC section 415(c).

(2) After-tax member contributions cannot be accepted if:

(a) the member is purchasing more than five years of nonqualified service credit; or

(b) any nonqualified service credit is taken into account under this rule before the member has at least five years of participation under the retirement system.

AUTH: 19-20-201, MCA  
IMP: 19-20-106, MCA

NEW RULE II LIMITATION ON ANNUAL BENEFIT (1) For purposes of this rule, all defined benefit plans of the employer, whether or not terminated, are to be treated as a single defined benefit plan.

(2) For purposes of applying the limits under Internal Revenue Code (IRC) section 415(b), in no event shall a member's annual benefit payable under the Teachers' Retirement System in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC section 415(d) and the regulations thereunder.

(3) If the form of benefit is not a straight life or a qualified joint and survivor annuity, then (2) is applied by either reducing:

(a) the limit in IRC section 415(b) applicable at the annuity starting date; or  
(b) adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the assumptions required by the Treasury Regulation under IRC section 415, and the applicable mortality table described in Treasury Regulations section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62).

AUTH: 19-20-201, MCA  
IMP: 19-20-106, MCA

NEW RULE III VESTING IN MEMBER CONTRIBUTIONS (1) A member shall be 100% vested in his or her accumulated contributions at all times.

AUTH: 19-20-201, MCA  
IMP: 19-20-106, MCA

NEW RULE IV GOOD FAITH COMPLIANCE WITH INTERNAL REVENUE CODE (1) The Teachers' Retirement System will pay all benefits in accordance with a good faith interpretation of the requirements of IRC section 401(a)(9) and the regulations thereunder as applicable to a governmental plan, within the meaning of IRC section 414(d).

AUTH: 19-20-201, MCA  
IMP: 19-20-106, MCA

NEW RULE V TIMING OF DISTRIBUTION (1) A member's entire benefit must be distributed:

(a) over the member's life or the lives of the member and a designated beneficiary; or

(b) over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.

(2) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's benefit must be distributed at least as rapidly as under the method of distribution before the member's death.

(3) If a member dies before the required distribution of the member's benefits has begun, the member's entire benefit must be:

(a) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death; or

(b) distributed within five years of the member's death.

AUTH: 19-20-201, MCA

IMP: 19-20-106, MCA

NEW RULE VI LIMITATION ON AMOUNT OF ANNUITY DISTRIBUTION TO BENEFICIARY (1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement in IRC section 401(a)(9)(G).

(2) Effective for any annuity commencing on or after July 1, 2008, the amount of annuity paid to a member's beneficiary may not exceed the minimum distribution incidental benefit rule under Treasury Regulation section 1.401(a)(9)-6, Q&A-2.

AUTH: 19-20-201, MCA

IMP: 19-20-106, MCA

NEW RULE VII DEATH AND DISABILITY BENEFITS LIMITED BY INCIDENTAL BENEFIT RULE (1) The death and disability benefits distributed by the Teachers' Retirement System will be limited by the incidental benefit rule set forth in IRC section 401(a)(9)(G) and Treasury Regulation section 1.401-1(b)(1)(i).

(2) The total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the Teachers' Retirement System.

AUTH: 19-20-201, MCA

IMP: 19-20-106, MCA

NEW RULE VIII GOOD FAITH CONTINUATION OF DISTRIBUTION OPTIONS (1) Notwithstanding any other provision of this chapter or the Treasury Regulations, benefit distribution options may continue so long as the option satisfies IRC section 401(a)(9) based on a reasonable and good faith interpretation of that section.

AUTH: 19-20-201, MCA

IMP: 19-20-106, MCA

NEW RULE IX DISTRIBUTION BY DIRECT ROLLOVER (1) A participant may elect to have any portion of an eligible rollover distribution made as a direct rollover.

(2) An "eligible rollover distribution" means any allowed distribution of all or any portion of the accumulated contributions of a member to an eligible retirement plan to the credit of a participant, except that an eligible rollover distribution does not

include:

(a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the participant or the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a specified period of ten years or more;

(b) any distribution to the extent such distribution is required under IRC 401(a)(9);

(c) the portion of any distribution that is not includible in gross income; and

(d) any other distribution that is reasonably expected to total less than \$200 during the year.

(3) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income; however, such portion may be transferred only:

(a) to an individual retirement account or annuity described in IRC section 408(a) or (b);

(b) to a qualified defined contribution plan described in IRC section 401(a);

(c) on or after January 1, 2007, to a qualified defined benefit plan described in IRC section 401(a); or

(d) on or after January 1, 2007, to an annuity contract described in IRC section 403(b) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(4) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a FLO, as defined in IRC section 414(p).

(5) A participant who is a nonspouse beneficiary may rollover a distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution. The account or annuity will be treated as an inherited individual retirement account or annuity.

AUTH: 19-20-201, MCA

IMP: 19-20-106, MCA

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined.

2.44.301A DEFINITIONS For the purpose of this chapter, the following definitions apply:

(1) "Alternate payee" means an alternate payee as defined in 19-20-305, MCA.

(1) and (2) remain the same, but are renumbered (2) and (3).

(4) "Direct rollover" means a distribution made by the Teachers' Retirement System directly to an eligible retirement plan specified by the participant.

(5) "Eligible retirement plan" means any of the following that accepts a participant's eligible rollover distribution:

(a) an individual retirement account described in Internal Revenue Code (IRC) section 408(a);

(b) an individual retirement annuity described in IRC section 408(b);

(c) an annuity plan described in IRC section 403(a);

(d) a qualified trust described in section 401(a);

(e) effective January 1, 2002, an annuity contract described in IRC section 403(b);

(f) effective January 1, 2002, a plan eligible under IRC section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this chapter; or

(g) effective January 1, 2008, a Roth Individual Retirement Account (IRA) described in IRC section 408A.

(3) remains the same, but is renumbered (6).

(7) "Family law order (FLO)" means a family law order as defined in 19-20-305, MCA.

(8) "Nonqualified service credit" means permissive service credit other than for services as defined in IRC section 415(n)(3)(C).

(4) through (4)(f) remain the same, but are renumbered (9) through (9)(f).

(10) "Participant" means a person who has or is eligible to receive a distribution from the Teachers' Retirement System including:

(a) a member or former member;

(b) a member's or former member's surviving spouse;

(c) a member's or former member's spouse or former spouse who is the alternate payee under a FLO that qualifies as a domestic relations order as defined in IRC section 414(p); and

(d) effective January 1, 2007, a nonspouse who is a designated beneficiary as defined in IRC section 401(a)(9)(E).

(5) through (7) remain the same, but are renumbered (11) through (13).

AUTH: 19-4-201, 19-20-201, MCA;

IMP: 19-20-101, 19-20-106, 19-20-204, 19-20-302, MCA

2.44.522 FAMILY LAW ORDER - CONTENTS AND DURATION (1) and (2) remain the same.

(3) If benefits are payable pursuant to a FLO that meets the requirements of a domestic relations order as defined in IRC section 414(p), the applicable provisions of IRC section 414(p) will be followed by the Teachers' Retirement System in giving effect to the FLO.

(3) remains the same, but is renumbered (4).

AUTH: 19-20-201, MCA

IMP: 19-20-106, 19-20-305, MCA

2.44.523 FAMILY LAW ORDERS - APPROVAL AND IMPLEMENTATION

(1) through (8) remain the same.

(9) The Teachers' Retirement System may establish separate benefits for a member and an alternate payee.

AUTH: 19-20-201, MCA

IMP: 19-20-106, 19-20-305, MCA

STATEMENT OF REASONABLE NECESSITY: The additional and amended definitions set forth in ARM 2.44.301A are necessary to define terms used in existing, added, and amended provisions of the administrative rules pertaining to the Teachers' Retirement System in order to clarify those substantive provisions.

All other new rules and amendments set forth in this Notice are reasonably necessary to ongoing administration of the Teachers' Retirement System because the Internal Revenue Service requires that all of these provisions be included as provisions in the "plan documents" of a public pension plan in order for the public pension plan to maintain its status with the Internal Revenue Service as a qualified plan. All of the standards set forth in this notice are standards that the Teachers' Retirement System has been required to and has complied with up to this time, but are promulgated as rules now to meet new Internal Revenue Service requirements that certain standards be set forth in a pension plan's plan documents.

By virtue of the fact that public pension plans are established by legislative mandate, public pension systems do not typically generate and distribute "plan documents" that describe the benefits and obligations of the plan and its members. Rather, the plan documents of a public pension plan are comprised of the applicable statutes, administrative rules, and other standards that legally govern the public pension plan, so modification of the Teachers' Retirement System's plan documents means modification of the statutes and/or administrative rules governing the retirement system.

Failure to comply with the Internal Revenue Service's plan document requirements could result in the Teachers' Retirement System's plan losing its status as a qualified plan. Loss of status as a qualified plan would mean that the plan and contributing employers and employees would lose the favorable tax treatments applicable to contributions to and benefits from a qualified plan, including but not limited to pretax treatment of contributions.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: David L. Senn, Executive Director, Teachers' Retirement System, 1500 E. 6th Avenue, P.O. Box 200139, Helena, Montana 59620-0139, and must be received no later than 5:00 p.m. on December 4, 2008.

6. David L. Senn, Executive Director of the Teachers' Retirement System, has been designated to preside over and conduct this hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this Proposal Notice is available through the Teachers' Retirement System's web site at [www.trs.mt.gov](http://www.trs.mt.gov). The Teachers' Retirement System strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Teachers' Retirement System works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: /s/ David L. Senn  
David L. Senn  
Executive Director  
Teachers' Retirement System

By: /s/ Denise Pizzini  
Denise Pizzini, Rule Reviewer  
Teachers' Retirement System

Certified to the Secretary of State October 27, 2008.